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**FILED**  
Clerk  
District Court

**JUN 12 2006**

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

TOSHIHIRO TAKAHASHI,  
Plaintiff,

vs.


MAEDA PACIFIC CORPORATION,  
Defendant.

CIVIL ACTION NO. CV 05-0026

DEFENDANT MAEDA PACIFIC  
CORPORATION'S REQUESTED JURY  
INSTRUCTIONS

CARLSMITH BALL LLP

DATED: June 12, 2006.

  
JOHN D. OSBORN  
Attorneys for Defendant  
MAEDA PACIFIC CORPORATION

1 INSTRUCTION NO. \_\_\_\_\_  
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4 DUTY OF JURY

5 Ladies and gentlemen: You are now the jury in this case, and I want to take a few  
6 minutes to tell you something about your duties as jurors and to give you some instructions. At  
7 the end of the trial, I will give you more detailed instructions. Those instructions will control  
8 your deliberations.

9 You should not take anything I may say or do during the trial as indicating what I think of  
10 the evidence or what your verdict should be.  
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22 Model Civ. Jury Instr. 9th Cir. §1.1  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 CLAIMS AND DEFENSES

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5 To help you follow the evidence, I will give you a brief summary of the positions of the  
6 parties:

7 The Plaintiff claims that he sustained personal injury on March 17, 2005 when he tripped  
8 over an unmarked piece of PVC pipe which was protruding from the sidewalk in front of  
9 Remington's Club in Garapan. Plaintiff alleges that Defendant was negligent in failing to  
10 properly warn of the existence of the pipe. Plaintiff seeks money damages for pain and suffering  
11 and for past and future medical expenses.

12 The Defendant denies that it was negligent and alleges that any injury sustained by  
13 Plaintiff was the result of his own negligence in failing to observe the pipe.

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25 Model Civ. Jury Instr. 9th Cir. §1.2.  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 WHAT IS EVIDENCE

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5 The evidence you are to consider in deciding what the facts are consists of:

- 6 (1) the sworn testimony of any witness;  
7 (2) the exhibits which are received into evidence; and  
8 (3) any facts to which the lawyers stipulate.  
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20 Model Civ. Jury Instr. 9th Cir. § 1.3  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 WHAT IS NOT EVIDENCE

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5 The following things are not evidence, and you must not consider them as evidence in  
6 deciding the facts of this case:  
7 (1) statements and arguments of the attorneys;  
8 (2) questions and objections of the attorneys;  
9 (3) testimony that I instruct you to disregard; and  
10 (4) anything you may see or hear when the court is not in session even if what you see or hear is  
done or said by one of the parties or by one of the witnesses.

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22 Model Civ. Jury Instr. 9th Cir. § 1.4  
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1 INSTRUCTION NO. \_\_\_\_\_

2 EVIDENCE FOR LIMITED PURPOSE

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4 Some evidence may be admitted for a limited purpose only. When I instruct you that an  
5 item of evidence has been admitted for a limited purpose, you must consider it only for that  
6 limited purpose and for no other

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20 Model Civ. Jury Instr. 9th Cir. § 1.5  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 DIRECT AND CIRCUMSTANTIAL EVIDENCE

4 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such  
5 as testimony by a witness about what that witness personally saw or heard or did. Circumstantial  
6 evidence is proof of one or more facts from which you could find another fact. You should  
7 consider both kinds of evidence. The law makes no distinction between the weight to be given to  
8 either direct or circumstantial evidence. It is for you to decide how much weight to give to any  
9 evidence.  
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24 Model Civ. Jury Instr. 9th Cir. § 1.6  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 RULING ON OBJECTIONS

4 There are rules of evidence that control what can be received into evidence. When a  
5 lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks  
6 that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the  
7 objection, the question may be answered or the exhibit received. If I sustain the objection, the  
8 question cannot be answered, and the exhibit cannot be received. Whenever I sustain an  
9 objection to a question, you must ignore the question and must not guess what the answer might  
10 have been.

11 Sometimes I may order that evidence be stricken from the record and that you disregard  
12 or ignore the evidence. That means that when you are deciding the case, you must not consider  
13 the evidence that I told you to disregard.  
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25 Model Civ. Jury Instr. 9th Cir. § 1.7  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 CREDIBILITY OF WITNESSES

4 In deciding the facts in this case, you may have to decide which testimony to believe and  
5 which testimony not to believe. You may believe everything a witness says, or part of it, or none  
6 of it.

7 In considering the testimony of any witness, you may take into account:  
8 (1) the opportunity and ability of the witness to see or hear or know the things testified to;  
9 (2) the witness' memory;  
10 (3) the witness' manner while testifying;  
11 (4) the witness' interest in the outcome of the case and any bias or prejudice;  
12 (5) whether other evidence contradicted the witness' testimony;  
13 (6) the reasonableness of the witness' testimony in light of all the evidence; and  
14 (7) any other factors that bear on believability.

15 The weight of the evidence as to a fact does not necessarily depend on the number of  
16 witnesses who testify.

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22 Model Civ. Jury Instr. 9th Cir. § 1.8  
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1 INSTRUCTION NO. \_\_\_\_\_

2 CONDUCT OF THE JURY

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4 I will now say a few words about your conduct as jurors.

5 First, you are not to discuss this case with anyone, including your fellow jurors, members  
6 of your family, people involved in the trial, or anyone else, nor are you allowed to permit others  
7 to discuss the case with you. If anyone approaches you and tries to talk to you about the case  
8 please let me know about immediately;

9 Second, do not read any news stories or articles or listen to any radio or television reports  
10 about the case or about anyone who has anything to do with it;

11 Third, do not do any research, such as consulting dictionaries, searching the Internet or  
12 using other reference materials, and do not make any investigation about the case on your own;

13 Fourth, if you need to communicate with me simply give a signed note to the bailiff to  
14 give me; and

15 Fifth, do not make up your mind about what the verdict should be until after you have  
16 gone to the jury room to decide that case and you and your fellow jurors have discussed the  
17 evidence. Keep an open mind until then.

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25 Model Civ. Jury Instr. 9th Cir. § 1.9

1 INSTRUCTION NO. \_\_\_\_\_

2 NO TRANSCRIPT AVAILABLE TO JURY

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4 At the end of the trial, you will have to make your decision based on what you recall of  
5 the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the  
6 testimony as it is given.

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23 Model Civ. Jury Instr. 9th Cir. § 1.10  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 TAKING NOTES

4 If you wish, you may take notes to help you remember what witnesses said. If you do  
5 take notes, please keep them to yourself until you and your fellow jurors go to the jury room to  
6 decide the case. Do not let note-taking distract you so that you do not hear other answers by  
7 witnesses. When you leave, your notes should be left in the courtroom.

8 Whether or not you take notes, you should rely on your own memory of what was said.  
9 Notes are only to assist your memory. You should not be overly influenced by the notes.

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24 Model Civ. Jury Instr. 9th Cir. §1.11  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 OUTLINE OF TRIAL

4 The next phase of the trial will now begin. First, each side may make an opening  
5 statement. An opening statement is not evidence. It is simply an outline to help you understand  
6 what that party expects the evidence will show. A party is not required to make an opening  
7 statement.

8 The plaintiff will then present evidence, and counsel for the defendant may cross-  
9 examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-  
10 examine.

11 After the evidence has been presented, I will instruct you on the law that applies to the  
12 case and the attorneys will make closing arguments.

13 After that, you will go to the jury room to deliberate on your verdict.  
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25 Model Civ. Jury Instr. 9th Cir. § 1.12  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 BURDEN OF PROOF - - PREPONDERANCE OF THE EVIDENCE

4 When a party has the burden of proof on any claim or affirmative defense by a  
5 preponderance of the evidence, it means you must be persuaded by the evidence that the claim or  
6 affirmative defense is more probably true than not true.

7 You should base your decision on all of the evidence, regardless of which party presented  
8 it.

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21 Model Civ. Jury Instr. 9th Cir. § 1.13  
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1 INSTRUCTION NO. \_\_\_\_\_

2 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION

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4 Japanese may be used during this trial.

5 The evidence you are to consider is only that provided through the official court  
6 translators. Although some of you may know Japanese, it is important that all jurors consider the  
7 same evidence. Therefore, you must accept the English translation. You must disregard any  
8 different meaning.

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23 Model Civ. Jury Instr. 9th Cir. § 1.16  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 STIPULATIONS OF FACT

4 The parties have agreed to certain facts that have been stated to you. You should  
5 therefore treat these facts as having been proved.

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21 Model Civ. Jury Instr. 9th Cir. § 2.4  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

4 Members of the jury, now that you have heard all the evidence, it is my duty to instruct  
5 you on the law which applies to this case. A copy of these instructions will be available in the  
6 jury room for you to consult if you find it necessary.

7 It is your duty to find the facts from all the evidence in the case. To those facts you will  
8 apply the law as I give it to you. You must follow the law as I give it to you whether you agree  
9 with it or not. You must not be influenced by any personal likes and dislikes, opinions,  
10 prejudices, or sympathy. That means that you must decide the case solely on the evidence before  
11 you. You will recall that you took an oath promising to do so at the beginning of the case.

12 In following my instructions, you must follow all of them and not single out some and  
13 ignore others; they are all equally important. You must not read into these instructions or into  
14 anything the court may have said or done any suggestions as to what verdict you should return - -  
15 that is a matter entirely up to you.

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25 Model Civ. Jury Instr. 9th Cir. §3.1  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 WHAT IS EVIDENCE

4 The evidence from which you are to decide what the facts are consists of:

5 (1) the sworn testimony of any witness;

6 (2) the exhibits which have been received into evidence; and

7 (3) any facts to which the lawyers have agreed or stipulated.

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23 Model Civ. Jury Instr. 9th Cir. §3.2  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 WHAT IS NOT EVIDENCE

4 In reaching your verdict, you may consider only the testimony and exhibits received into  
5 evidence. Certain things are not evidence, and you may not consider them in deciding what the  
6 facts are. I will list them for you:

7 (1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses.  
8 What they have said in their opening statements, will say in their closing arguments, and at other  
9 times is intended to help you interpret the evidence, but it is not evidence. If the facts as you  
remember them differ from the way the lawyers have stated them, your memory of them  
controls.

10 (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients  
11 to object when they believe a question is improper under the rules of evidence. You should not  
be influenced by the objection and by the Court's ruling on it.

12 (3) Testimony that has been excluded or stricken, or that you have been instructed to disregard,  
13 is not evidence and must not be considered. [In addition some testimony and exhibits have been  
received only for a limited purpose; where I have given a limiting instruction, you must follow  
it.]

14 (4) Anything you may have seen or heard when the court was not in session is not evidence.  
15 You are to decide the case solely on the evidence received at the trial.

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19 Model Civ. Jury Instr. 9th Cir. §3.3  
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1 INSTRUCTION NO. \_\_\_\_\_

2 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION

3  
4 Japanese has been used during this trial.

5 The evidence you are to consider is only that provided through the official court  
6 translator. Although some of you may know Japanese, it is important that all jurors consider the  
7 same evidence. Therefore, you must base your decision on the evidence presented in the English  
8 translation. You must disregard any different meaning.

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1 INSTRUCTION NO. \_\_\_\_\_

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3 DIRECT AND CIRCUMSTANTIAL EVIDENCE

4 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such  
5 as testimony by a witness about what the witness personally saw or heard or did. Circumstantial  
6 evidence is proof of one or more facts from which you could find another fact. You should  
7 consider both kinds of evidence. The law makes no distinction between the weight to be given to  
8 either direct or circumstantial evidence. It is for you to decide how much weight to give to any  
9 evidence.  
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23 Model Civ. Jury Instr. 9th Cir. §3.5  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 CREDIBILITY OF WITNESS

4 In deciding the facts in this case, you may have to decide which testimony to believe and  
5 which testimony not to believe. You may believe everything a witness says, or part of it, or none  
6 of it.

7 In considering the testimony of any witness, you may take into account:

- 8 (1) the opportunity and ability of the witness to see or hear or know the things testified to;  
9 (2) the witness' memory;  
10 (3) the witness' manner while testifying;  
11 (4) the witness' interest in the outcome of the case and any bias or prejudice;  
12 (5) whether other evidence contradicted the witness' testimony;  
13 (6) the reasonableness of the witness' testimony in light of all the evidence; and  
14 (7) any other factors that bear on believability.

15 The weight of the evidence as to a fact does not necessarily depend on the number of  
16 witnesses who testify.

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21 Model Civ. Jury Instr. 9th Cir. §3.6  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 OPINION EVIDENCE, EXPERT WITNESSES

4 You have heard testimony from a person who, because of education or experience,  
5 permitted to state opinions and the reasons for those opinions.

6 Opinion testimony should be judged just like any other testimony. You may accept it or  
7 reject it, and give it as much weight as you think it deserves, considering the witness' education  
8 and experience, the reasons given for the opinion, and all the other evidence in the case.  
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22 Model Civ. Jury Instr. 9th Cir. §3.7  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

4 Certain charts and summaries that have not been received in evidence have been shown  
5 to you in order to help explain the contents of books, records, documents, or other evidence in  
6 the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect  
7 the facts or figures shown by the evidence in the case, you should disregard these charts and  
8 summaries and determine the facts from the underlying evidence.  
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22 Model Civ. Jury Instr. 9th Cir. § 3.9  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 CHARTS AND SUMMARIES IN EVIDENCE

4 Certain charts and summaries have been received into evidence to illustrate information  
5 brought out in the trial. Charts and summaries are only as good as the underlying evidence that  
6 supports them. You should, therefore, give them only such weight as you think the underlying  
7 evidence deserves.  
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20 Model Civ. Jury Instr. 9th Cir. § 3.10  
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